IN THE HIGH COURT OF M.P. : AT JABALPUR

Writ Petition No. 537/1995

PETITIONERS : 1. Vijay das Manikpuri, S/o Chaturdas Kotwar of mouza Bardi, Tahsil Kawardha, District - Rajnandgaon.

2. Aghanudas S/o Sukhdas resident of P.H.No./13, mouza Chhata, Tahsil Kawardha, Distt.Rajnandgaon.

3. Rajnandgaon & Durg Districts Kotwari Sangh, Bardi, Tahsil Kawardha, Distt. Rajnandgaon.

-Versus-

RESPONDENTS : State of M.P. through Secretary, Department of Revenue, Bhopal.

PETITION UNDER ARTICLES 226/227 CONSTITUTION OF INDIA.

HIGH COURT OF JUDICATURE CHHATTISGARH: BILASPUR
(Division Bench)

CORAM: **Hon'ble Shri A.K.Patnaik, CJ**
& Hon'ble Shri Dhirendra Mishra, J.

Writ Petition No. 537 of 1995.

Vijay Das Manikpuri & others

Versus

State of Madhya Pradesh
(Now Chhattisgarh)

Present: Mr. A.K. Pandey, learned counsel for the Petitioners.

Mr. Sanjay S Agrawal, learned Govt. Advocate for the State/ respondent.

ORDER
(Passed on 18th August 2005)

The following oral order of the Court was passed by A.K.Patnaik, CJ:-

Petitioner No.1 claims to be the son of Chaturdas, Kotwar of Mouza Bardi, Tehsil Kawardha and petitioner No.2 claims to be the son of Sukhdas, Kotwar of Mouza Chhata, Tehsil Kawardha. Petitioner No.3 is Rajnandgaon and Durg Districts Kotwari Sangh. The case of the petitioners is that Kotwars were rendering services to the village community and for their services they had been allotted some land by the ex-proprietors. With effect from 31-03-1951 the interest of the ex-proprietors in the land vested in the State by the provisions of M.P. Abolition of Proprietary Rights (Estates, Mahals, Alienated Lands) Act, 1950. Under Sub-section (3) of Section 45 of the said Act any person holding land other than *sir* land from the proprietor on favourable terms for

service rendered by him was declared to be an occupancy tenant of the State from the date of vesting of the said land. Accordingly, the Kotwars, in whose favour the ex-proprietors of the land, had allotted the land on favourable terms for service rendered by them became occupancy tenants of the State under Sub-section (3) of Section 45 of the M.P. Abolition of Proprietary Rights (Estates, Mahals, Alienated Lands) Act, 1950. All occupancy tenants were entitled to Bhumiswami rights under Section 190 of the M.P. Land Revenue Code. Notwithstanding the said position of law, Bhumiswami rights have not been conferred on fathers of petitioners 1and 2 and thereafter on petitioners 1 and 2 and similarly other Kotwars of the districts Rajnandgaon and Durg and their sons. The petitioners have filed this writ petition with a prayer to direct the respondent to give uniform Bhumiswami rights to all the Kotwars of the village over land held by them or their ancestors.

2). Mr. A.K. Pandey, learned counsel for the petitioner submitted that in the case of **Gaurishanker Choubey Vs. Baktha (1985 RN-228),** the learned Single Judge of the Madhya Pradesh High Court has held that a village Kotwar being not a personal servant of the proprietor and services having been rendered by him to the village community, Sub-section (3) of Section 45 of the M.P. Abolition of Proprietary Rights (Estates, Mahals, Alienated Lands) Act, 1950 was applicable and such village Kotwars are occupancy tenants of the State from the date of vesting by virtue of the statutory provisions. Mr. Pandey further submitted that the fathers of petitioners 1 and 2 and thereafter petitioners 1 and 2 have been in possession of the land which was given to their fathers by the ex-proprietors of the land for the service rendered by their fathers as Kotwars to the village community. He submitted that this is, therefore, a fit

case in which the High Court should direct the respondents to grant Bhumiswami rights to petitioners 1 and 2 and other Kotwars of Rajnandgaon and Durg districts and their sons.

3). Mr. Sanjay S Agrawal, learned Government Advocate for the State of Chhattisgarh, on the other hand, relying on the return filed on behalf of the respondent/State that Section 230 of the M.P. Land Revenue Code 1959 makes it clear that only persons found suitable are appointed as Kotwars. He submitted that petitioners 1 and 2, therefore, cannot legally inherit any rights of Kotwars on the ground that their fathers were Kotwars. He also submitted that the petitioners should have approached the Court soon after the decision of the M.P. High Court, reported in 1985 RN 228, but they have approached this Court more than 10 years after the said decision in that case.

4). On a reading of the provisions of Sub-section (3) of Section 45 of the M.P. Abolition of Proprietary Rights (Estates, Mahals, Alienated Lands) Act, 1950, we find that any person holding land other than *sir* land from the proprietor on favourable terms for service rendered by him has been declared to be an occupancy tenant of the State from the date of vesting and the Dy. Commissioner is required to fix the rent to be paid by such occupancy tenant to the State. It further appears that from a reading of Section 190 of M.P. Land Revenue Code 1959 which after its adoption by the Government of Chhattisgarh is titled as C.G. Land Revenue Code, 1959 that the rights of a Bhumiswami will accrue to the occupancy tenant in respect of the land held by him with effect from the dates specified therein. It also appears from the decision of the M.P. High Court in the case of Gaurishankar Choubey Vs. Baktha (Supra) that a Kotwar in continuous possession of the land given to him for service rendered to the

village community by the proprietor of the land has been held to be an occupancy tenant of the State from the date of vesting. It also appears that the aforesaid decision of the M.P. High Court in the case of Gaurishankar Choubey Vs. Baktha(Supra) has been rendered on the basis of the law laid down in the case of **Jiwanlal Vs. Board of Revenue (1961 MPLJ- SN-78).** But the petitioners can be recorded as Bhumiswami in respect of the land in question only if their fathers were village Kotwars in occupation of the lands given to them by the ex-proprietors for service to the village community at the time of vesting. As to whether or not a person is a Kotwar or is a son of a Kotwar and was in occupation of land given to him by the ex-proprietor of land for service rendered to the village community at the time of vesting is a factual question to be decided by the competent authority and cannot be decided by us in the present writ petition under Article 226 of the Constitution.

5). For the aforesaid reasons, we dispose of the writ petition with a direction that the petitioners may file appropriate applications before the Tehsildar in whose jurisdiction the land claimed by the petitioners falls and the Tehsildar on receipt of such application will make an enquiry into the aforesaid factual aspect and pass orders on the application of the petitioners in accordance with law as discussed above.

Sd/-
Chief Justice

Sd/-
DHIRENDRA MISHRA
Judge